

# **EXHIBIT A**

El Paso County - 34th District Court

Filed 12/22/2017 3:21 PM  
Norma Favela Barceleau  
District Clerk  
El Paso County  
2017DCV4486

CAUSE NO. \_\_\_\_\_

**BLAINE MCNUTT**  
**PLAINTIFF**

VS.

**DILLARDS, INC**  
**DEFENDANT**

\$ IN THE COURT  
\$  
\$  
\$ EL PASO COUNTY, TEXAS

**PLAINTIFF'S ORIGINAL PETITION**

**TO THE HONORABLE JUDGE OF SAID COURT:**

COMES NOW Plaintiff, Blaine McNutt, and for cause of action would show the Court as follows:

**I. DISCOVERY**

1. Plaintiff proposes to conduct level 3 discovery as provided by TRCP 190.4.

**II. PARTIES**

2. Plaintiff is an individual who resides in El Paso County, Texas. The last three digits of his social security number are 646. The last three digits of his driver's license number are 847.
3. Defendant, Dillard, Inc., is a Foreign For-Profit Corporation incorporated in Delaware with its principal place of business in Arkansas, but doing business in Texas. It may be served with process at its registered agent for service of process in the State of Texas: CT CORPORATION SYSTEMS, 1999 Bryan St. Suite 900, Dallas, TX 75201

**III. JURISDICTION, VENUE, AND RULE 47**

4. Venue is proper in El Paso, Texas because this is the County in which the plaintiff resides and the county in which all or a substantial part of the events giving rise to this lawsuit occurred.

The amount in controversy, exceeds the minimum jurisdictional limit of this Court and is less than the maximum jurisdictional limit of this court. Pursuant to Rule 47 of the Texas Rules of Civil Procedure, Plaintiff seeks monetary relief of \$100,000 or less and in addition declaratory relief. The specific language of the preceding sentence is required by Rule 47, to be more specific, Plaintiff seeks primarily declaratory relief and incidental monetary relief as prayed for but in an amount of \$70,000 or less. The monetary relief would be limited to attorney fees and costs of suit.

#### IV. FACTS

5. On or about December 1, 2017 Plaintiff purchased from Defendant shirt claiming on its hang tag to be made from "100% Cotton (Pima) and long fiber staples." The shirt is SKU 926/744/65 and the shirt and its hang tag are shown in the photograph attached as Exhibit A. (hereinafter "the Product") Plaintiff made the purchase from Defendant in El Paso County, Texas. The product was advertised and sold by Defendant as "100% Cotton (Pima) and long fiber staples." The Product bears a hang tag representing that the Product is "100% Cotton (Pima) and long fiber staples." After purchasing the product Plaintiff became concerned that the composition of the product may not in fact be "100% Cotton (Pima) and long fiber staples." Testing a new identical product purchased from the same store by an independent ISO 9000 certified laboratory using ASTM industry standard testing methods revealed that the product was not "100% Cotton (Pima) and long fiber staples," but was made from much shorter cotton fibers. The testing shows only a tiny fraction of the cotton would qualify as "Cotton (Pima) and long fiber staples" far less than the 100% claimed. The test results are attached to and incorporated into this Petition as Exhibit B.

#### V. DECLARATORY JUDGMENT

6. Plaintiff re-alleges as it set forth fully here all allegations in the previous sections of this Original Petition. For clarity, Plaintiff is not making a claim for any type of relief under the Texas Deceptive Trade Practices Act, which means Plaintiff is not making a claim under Texas Business and Commerce Code section 17.50(b)(1). Any assertion to the contrary would be contrary plaintiff's pleadings/claims and frivolous.

7. Pursuant to Texas Civil Practice and Remedies Code Chapter 37, Plaintiff seeks a declaration establishing the following as the Court determines according to law:

- a. The actions of Plaintiff and Defendant and the representations in the advertising of and on the product at issue in this lawsuit establish the terms of a contract for the purchase by Plaintiff from Defendant of a shirt and a term/condition of that contract is that the shirt is made of "100% Cotton (Pima) and long fiber staples."
- b. Defendant sold to Plaintiff the Product.
- c. Plaintiff is a "consumer" as that term is defined under the Texas Deceptive Trade Practices Act.
- d. The Product is a "good" as that term is defined under the Texas Deceptive Trade Practices Act.
- e. The Product does not contain "100% Cotton (Pima) and long fiber staples."
- f. Defendant represented the Product contains "100% Cotton (Pima) and long fiber staples."
- g.. Defendant offered for sale and sold to Plaintiff a good (the Product) that did not have characteristics or benefits those goods were represented to have (the Product was not made of "100% Cotton (Pima) and long fiber staples").

- h. Providing the Product actually containing "100% Cotton (Pima) and long fiber staples" was a requirement of the contract between Plaintiff and Defendant.
- i. The Product at issue in this lawsuit is misbranded.
- j. Defendant's act of selling the Product with the representation affixed to it that the Product contains "100% Cotton (Pima) and long fiber staples" is a deceptive trade practice.
- l. Continued sale of the Product by Defendant with the representation on the tags that the composition of the Product is "100% Cotton (Pima) and long fiber staples" is illegal.
- m. Defendant breached the contact between Plaintiff and Defendant by providing to Plaintiff the Product containing less than "100% Cotton (Pima) and long fiber staples."

## **VI. REQUEST FOR DISCLOSURE, INTERROGATORIES AND REQUESTS FOR PRODUCTION**

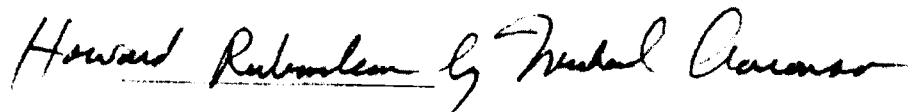
10. Plaintiff hereby serves its Requests for Disclosure of the information, material, and documents described in Rule 194.2 of the Texas Rules of Civil Procedure on Defendant. Defendant's responses and responsive documents are due within fifty (50) days of service of these requests to undersigned counsel for Plaintiff. Plaintiff is also serving with this Original Petition, a First Set of Interrogatories and First Set of Requests for Production to which Defendant should respond as required by the Texas Rules of Civil Procedure.

**VII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, prays for judgment against Defendants as follows:

1. For all declaratory relief requested above;
2. For attorney fees as allowed by law under Chapter 37 of the Civil Practice and Remedies Code;
3. For all costs of these proceedings as allowed under Chapter 37 of the Civil Practice and Remedies Code; and
4. For all such other and further relief as to the Court may seem just and proper.

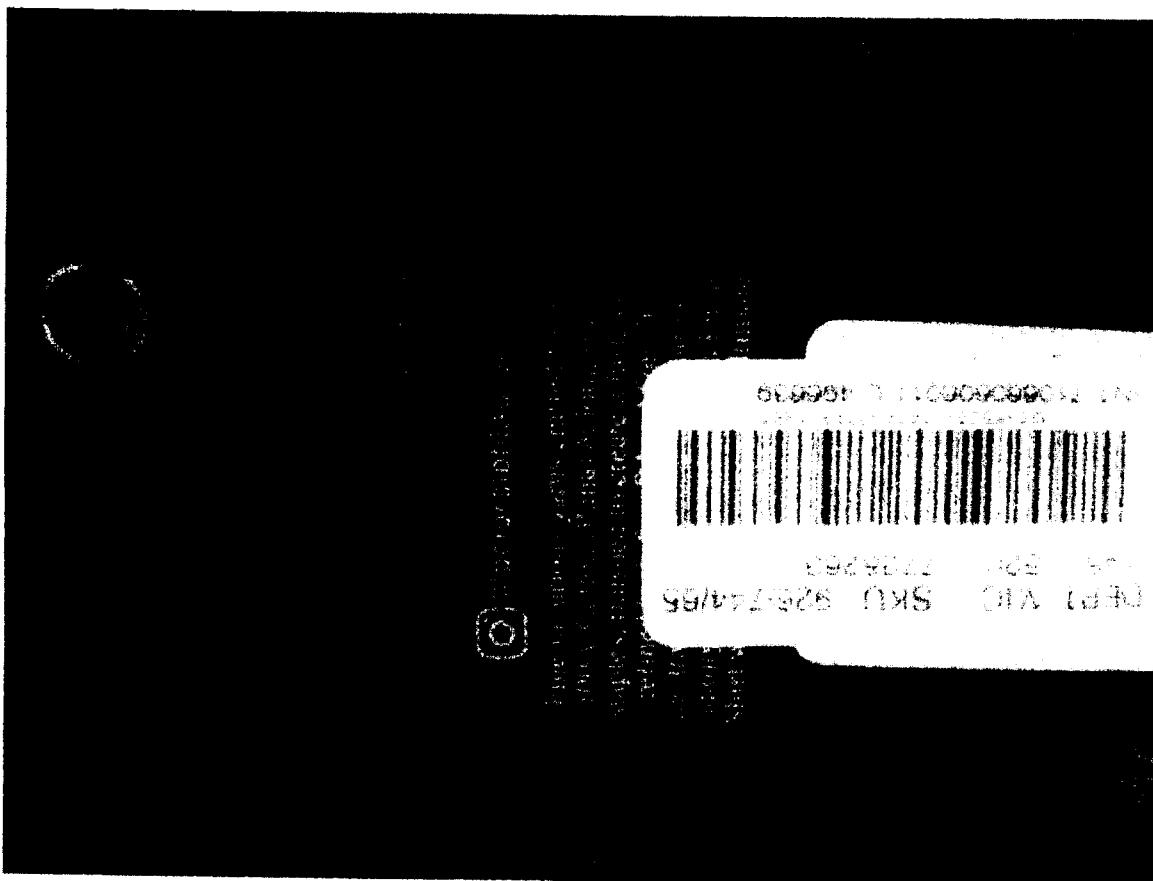
Respectfully Submitted,



Howard Rubinstein  
4000 N. Ocean Blvd.  
East Tower 201  
Singer Island, Florida, 33404  
Phone 832 7152788  
SBN 17361900  
Email HowardR@pdq.net

ATTORNEY FOR PLAINTIFF

**Exhibit A**



**Exhibit B**



A registered ISO 9001:2008 laboratory

4207-1 Milgen Road, Columbus, GA 31907

Telephone: 844-309-6337

www.texttest.com

TexTest Report: 5618  
 Date: 12/14/17  
 Page: 1 of 3

**CLIENT:**

**LAW OFFICES OF HOWARD W. RUBENSTEIN**  
 4000 North Ocean Drive East Tower 201  
 Singer Island, FL 33404

ATTN: Howard Rubenstein

**SAMPLE IDENTIFICATION:** SAMPLE #1 DILLARD'S POLO Ralph Lauren Green Shirt  
 RN41381 SUPPLIER #0200011542 PO# 4700528463  
 Made in China

<b>FIBER LENGTH AND DISTRIBUTION ASTM D 5103</b>	Length Group Lower Limit (in.)	Number of Fibers	<b>SAMPLE #1</b>	
			Percent of Total	Probability
	2.040	0	0	
	1.920	0	0	
	1.800	0	0	
	1.680	0	0	
Extra Long	1.560	0	0	
Long	1.440	0	0	
Medium	1.320	0	0	
Short	1.200	2	2	
	1.080	3	3	
	0.960	12	12	
	0.840	14	14	
	0.720	10	10	
	0.600	13	13	
	0.480	12	12	
	0.360	27	27	
	0.240	7	7	
	0.120	0	0	
	0.000	0	0	
		100	100	
Total				
Average Length	0.670			
Standard Deviation	0.26			
Coefficient of Variation	0.38 %			

**FIBER ANALYSIS:**AATCC 20A

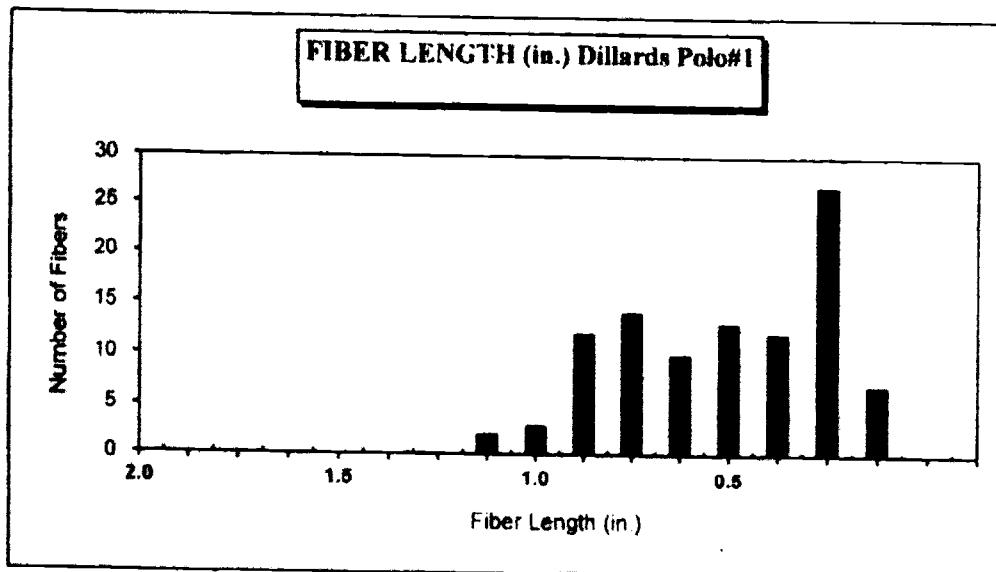
100% Cotton

TEXTEST

signed by

TexTest Report: 5618  
 Date: 12/14/17  
 Page: 2 of 3

**SAMPLE IDENTIFICATION:**  
 LABELED 100% COTTON (PIMA)  
 SAMPLE #1 DILLARD'S POLO Ralph Lauren Green Shirt  
 RN41381 SUPPLIER #0200011542 PO# 4700528463  
 Made in China

**SUMMARY COMPARISON**

1

Average Length inches	0.670
Std. Deviation	0.256
Coefficient of Variation	0.38 %
Maximum	1.285
Minimum	0.224

American Pima Standard 1.2 to 1.48"  
 Supima Standard 1.25" to 1.56"  
 Egyptian ELS Std 1.5" to 2.5"  
 GIZA 87 93 Std. 1.4 to 1.45"  
 Short Fiber Content Less than 0.5"